

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 1192 of 2004()

**CRA.278/2001 of SESSIONS COURT, TRIVANDRUM
CC.505/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I,
ATTINGAL**

REVN. PETITIONER: APPELLANT/ACCUSED:

**JAYASREE,
SURENDRA VIHAR, THOPPIL PURAYIDOM, AZHOOR VILLAGE,
CHIRAYINKIL, THIRUVANANTHAPURAM.**

BY ADV. SMT.K.KUSUMAM

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE:

**1. VIJAYADAS J.,
AMBIKA BHAVAN, AZHOOR VILLAGE, THIRUVANANTHAPURAM.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN
PUBLIC PROSECUTOR SRI.C.M.NAZAR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V.RAMKUMAR, J.

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Crl.R.P. No. 1192 of 2004

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Dated: 29-11-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 505 of 1999 on the file of the J.F.C.M.-I, Attingal challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel appearing for the revision petitioner made the following further submissions before me:-

According to the complainant Ext.P1 cheque was issued to the accused on 20-3-1999. But the defence evidence adduced

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by the accused will show that the cheque book containing Ext.P1 cheque leaf was issued only on 13-05-1999 and therefore, it was impossible for the accused to issue a cheque on 20-3-1999 as alleged by the complainant. The conviction recorded by both the courts below overlooking the above vital aspects cannot be sustained. According to the revision petitioner the cheque in question was a signed blank cheque issued to the complainant in connection with some other transaction. That cannot be the subject matter of a prosecution under Section 138 of the N.I. Act. In **Avon Organics Ltd. v. Pioneer Products Limited and Others - 2004 (1) Crimes 567** a learned Single Judge of the Andhra Pradesh High court had held that if a cheque is not drawn for a specified amount, it will not fall within the definition of bill of exchange and if the cheque has been subsequently filled up it would amount to material alteration.

5. I am afraid that I cannot agree with the above submissions. In the first place, the revision petitioner has no grievance either in the appeal memorandum filed before the lower appellate court or in the revision filed before this Court that it was impossible for the accused to issue the cheque in question on 20-3-1999 since the cheque book itself was issued by the drawee bank only subsequently and although the above contention was urged before the courts below, the same was omitted to be considered by the courts below. Secondly, the fact that merely because the cheque was issued by the drawee bank only on 13-5-1999 it will not improbabilise the contention of the complainant since even according to the complainant the cheque was issued after the borrowal on 20-3-1999 pursuant to a refusal on the part of the accused to pay the amount when

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demanded. The judgments of both the courts below is silent about the point having been urged before the courts below and that should be the last word on this question, particularly when the revision petitioner has no complaint in the appeal or in this revision that eventhough this point was urged it was omitted to be considered by the courts below.

6. As for the contention that a signed blank cheque was issued and the subsequent filling up of the same by the complainant will amount to material alteration, the accused has not been able to explain the circumstances under which he happened to issue a signed blank cheque. A signed blank cheque is given as a security so as enable the recipient to use it in the event of default. In such a case it can be presumed that there was an implied authority given to the recipient to fill up the columns in the cheque so as to make it a complete negotiable instrument. Otherwise, no person will receive a signed blank cheque as a security if he cannot use it as a negotiable instrument in the event of default committed by the giver of the instrument. Hence the above decision cannot have any application to the facts of this case. If the in question was given as security, then the revision petitioner owed a duty to explain the circumstances under which it happened to be issued. In the absence of the above, the courts below are justified in holding that the cheque was issued in discharge of a liability pursuant to the borrowal of Rs. 40000/- made by the revision petitioner. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the finding of guilt. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded

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concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner or not. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till rising of court and to pay a fine of Rs. 15,000/- (giving credit to the sum of Rs. 25,000/- deposited before the trial court pursuant to the interim orders passed by this Court and which amount shall be permitted to be withdrawn by the first respondent/complainant) which shall be deposited before the trial court within two months from today failing which he shall suffer simple imprisonment for three months by way of default sentence. The fine amount as and when deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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